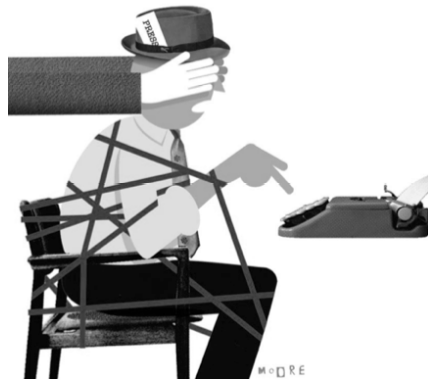


“Sedition” and Journalism Restrictions



HUMS3001 Lecture Eight
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Lecture Overview

- **State of the Australian Press**
 - Case Study One: Mohammed cartoons
- **Anti-terror laws and Whistleblowers**
 - Case Study Two: Harvey/McManus
 - Case Study Three: Lampathakis
- **Press and Power**
- **Essay Return**

Press Freedom

- Hanno Hardt in *Social Theories of the Press* (2001)
 - “Indeed, press freedom is a prerequisite condition for competing political beliefs and struggling ideologies in the public sphere. [...] Press freedom suggests access not only to contesting ideas but also to the public discourse of society, which is strengthened by the potential of participation.” (37)

State of the Press

- From *Secrecy and Red Tape* (2009) by the Media, Entertainment and Arts Alliance:
 - “there has been some progress in tipping the balance in favour of the public’s right to know [but...] A cloak of secrecy [still] envelopes the activities of government” (3)
 - Cabinet secrecy / Freedom of Information
 - Suppression orders
 - Anti-terror laws
 - Whistleblowers / sources

State of the Press

- Paul Finn in “The Public Interest and Whistleblowing” (1991):
 - “When one amalgamates the plethora of statutory provisions, regulations, codes, administrative instructions and common law rules one is left in almost every Australian jurisdiction with an ill-fitting, sometimes unintelligible mosaic of prescriptions and proscriptions [...] the trivial can be criminalised, the important left in a state of lamentable uncertainty” (92)

Mohammed Cartoons

- Originally printed in the Danish magazine *Jyllands-Posten* in September 2005
- Caused rioting in Denmark and then in Pakistan
- Reprinted in London and the US and in two Australian papers
- Recently removed from a Yale UP book, *Cartoons that Shook the World*

Mohammed Cartoons

- Liberty vs Harm
- Free Press vs Social Responsibility
- From the *National Classification Code*
 - People should be “protected from exposure to unsolicited material that they find offensive” or that “incites violence”
 - The right to see, hear and read what you want vs community standards

Right to Know

- Major industry players have joined forces to launch “Australia’s Right to Know” campaign
- Irene Moss’s report “Report of the Independent Audit into the State of Free Speech in Australia” (2007) was commissioned by “Right to Know”

Right to Know

- Moss states:
 - “free speech and media freedom are being whittled away by gradual and sometimes almost imperceptible degrees. [...] The audit’s examination and resulting observations should ring alarm bells for those who value free speech and democracy.”

Anti-terror Laws

- Crime - (Sedition) *Anti-terrorism Act* (Cth 2005)
 - Advocating Terrorism
- Punishment
 - Search and Enter Premises
 - Shoot to Kill
 - Control order
 - Preventative Detention
 - Prohibited Contact Order



Cartoon by Matt Golding

Anti-terror Laws

- Mark Pearson, in *The Journalist's Guide to Media Law* (2007, p314) identified the following effects of Anti-terror law on journalists:
 - Exposure to detention/questioning
 - Exposure to surveillance
 - Work materials being seized
 - Suppressions that leave events/actions unreportable
 - Restricting journalists' movements
 - Risk criminal charges if deemed to incite or encourage terrorism
 - Exposure to risk by mere association (with sources)

Anti-terror Laws

- Lynch and Williams propose the following test to assess limitations on speech ("Shades of Grey" 2006, p60):
 1. Will the restriction actually limit harm?
 2. Is the restriction proportionate to the harm that is prevented?
 3. Is the limit the least restrictive means of preventing the harm?

Sources and Whistleblowers

- Whistleblower: an ‘insider’ who makes public interest disclosures about their workplace, sometimes desiring anonymity
- Shield Law: a regulation that determines the extent to which journalists are protected by their code of ethics (eg, not to reveal a source)

Sources and Whistleblowers

- Moss defines two ways legislation can “shield” journalists from disclosing sources:
 - “disclosure of journalists’ sources is necessary unless there is some case made out to resist disclosure. In short, the onus is on the journalist.”
 - “disclosure of sources is not necessary and a case must be made out on the basis of some compelling public interest as to why the presumption against disclosure should be overturned.” (54)

Harvey and McManus

- “Cabinet’s \$500 million rebuff to veterans”
Herald Sun 20 Feb 2004.
 - Harvey and McManus were asked to testify against Desmond Kelly
 - Both refused and were charged with contempt of court



Harvey and McManus

- McManus, in *Secrecy and Red Tape*:
 - “More important than shielding journalists is the need to give whistleblowers some form of protection [...] The flipside of a failure to protect whistleblowers is to give cover to incompetent and corrupt public servants and their masters” (8)
- *Evidence Amendment (Journalist’s Privilege) Bill 2009*
 - Where “harm outweighed the desirability of the evidence being given” the court must respect the privilege. (quoting Warren *Secrecy* 7)

Lampathakis

- Paul Lampathakis - editor for *The Sunday Times* in Perth, WA
- Revealed corrupt State spending
- Offices raided by police in April 2008
- Refused to reveal source in July 2008 and threatened with 2 years' imprisonment and a \$24000 fine

Lampathakis

- “The day we were raided” in *Secrecy*
 - “Journalists aren’t asking that the law be changed so that we can protect serial killers, fraudsters or terrorists. It’s a matter of us being able to legally keep confidential the identity of those who give us information for stories which are in the public interest.” (18)

Other Cases

- Chris Graham, from the *National Indigenous Times*, had his office and house raided in 2004 (see Ester)
- Marin Chulov and Jonathan Porter, from *The Australian*, revealed customs information courtesy of ex-customs officer Allan Kessing. Kessing was sentenced to 9 months' jail (suspended on \$1000 bond)

Press and Power

- Slavko Splichal in *Principles of Publicity and Press Freedom* (2002)
 - “As communication in general, the press is a tissue interlacing all cells of society. Any attempt at limiting potential ‘inconveniences’ produced by a free press would inevitably lead to an almost inconceivable loss in the social well-being of individuals and society” (117-8)